

Response to Office Action of November 4, 2004
Application No.: 09/796,685
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REMARKS

This Request for Reconsideration is responsive to the Office Action mailed on November 4, 2004. Attached to this Request are (1) a Terminal Disclaimer, and (2) a Supplemental Declaration pursuant to 37 CFR 1.175.

In the Office Action, at page 2, claims 17-42 are rejected for obviousness-type double patenting. This rejection is traversed. However, to expedite the prosecution, a Terminal Disclaimer is attached. Withdrawal of the obviousness-type double patenting rejection is requested.

At pages 2-3 of the Office Action, the Office Action alleges that the original reissue declaration is defective, because it did not contain a statement that all errors being corrected arose without deceptive intent.

Applicants disagree and note that the "deceptive intention" statement is at page 2 of the Reissue Application Declaration By The Inventor filed with the present application. The originally filed Reissue Application Declaration is a PTO Form (PTO/SB/51) and presumably contains the appropriate language for a Reissue Declaration.

At page 3 of the Office Action, the Examiner states that the original letters patent must be received before the reissue application can be allowed.

Applicants submit that the original letter's patent was already filed in parent reissue application 09/796,685, filed on February 28, 2001, and was never returned to the Applicants by the PTO. Moreover, according to new 37 CFR 1.178 (final rule dated September 21, 2004), the offer to surrender a patent is presumed and the actual surrender of the patent takes place when the reissue application is granted. As understood by Applicants, the physical submission of the original letters patent is no longer required under the new rule. New rule 37 CFR 1.178 applies retroactively to all pending U.S. reissue applications.

At page 3 of the Office Action, claims 17-42 are rejected over an allegedly defective oath. The Office Action further indicates that a Supplemental Oath/Declaration may overcome this rejection.

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In response, attached hereto is a Supplemental Declaration executed by the inventor. The Supplemental Declaration contains the language requested by the Examiner.

CONCLUSION

In view of the foregoing, Applicants believe that this application is now in condition for allowance.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-273-7529.

Respectfully submitted,



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